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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,337	05/15/2001	Hirota Uchiyama	8085	1086

27752 7590 09/25/2006

THE PROCTER & GAMBLE COMPANY
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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/855,337	Applicant(s) UCHIYAMA ET AL.	
	Examiner Lakshmi S. Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of response and oath dated 6-29-06 is acknowledged.

Claims 1-14, 16 and 18-58 are pending.

The following rejection of record has been maintained:

Claims 1-14, 16 and 18-58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6-10 of U.S. Patent No. 6,878,695 in view of US 5,942,217 ('217) and US 5,879,666 ('666). Although the conflicting claims are not identical, they are not patentably distinct from each other because instant process of preparing the functionally available cyclodextrin containing composition involves the same steps, claimed by the above processes i.e., mixing the compatible and incompatible surfactants, followed by addition of cyclodextrins. With respect to the instant "functionally available" cyclodextrin, the above patent defines cyclodextrin to be functionally available and complexed with weakly complexing molecules having complexation constants in the range disclosed as well as claimed (col. 5, L 57-67). Thus, the cyclodextrin of instant and patented claims are of the same scope. Patented claims differ from that of instant in the absence of "molecular aggregates". However, applicants admitted that according to instant invention it is the order of mixing the components of the composition i.e., mixing both the surfactants (compatible and incompatible) to form a first mixture resulting in the formation of molecular aggregates and subsequently combining cyclodextrin with the first mixture. Therefore, due to the very process of adding the components of the composition, the formation of molecular aggregates result. Further, the surfactants (compatible and

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incompatible) claimed by the above patents include all of the claimed as well as the described surfactants of the instant application. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use the process of the patented claims to prepare cyclodextrin composition resulting in formation of molecular aggregates of cyclodextrin incompatible surfactants and employ the composition for effective and efficient capture of unwanted odor molecules.

Patent '217 teach compositions comprising uncomplexed cyclodextrin for absorbing odor from inanimate surfaces, particularly from clothes, fabric (col. 1, col. 3, lines 56-63; and cols. 6-8). Woo describes the same uncomplexed cyclodextrins as that of instant invention. Woo also teaches inclusion of cyclodextrin compatible surfactants along with uncomplexed cyclodextrins for absorbing the odors from fabrics, inclusion of antimicrobial compounds such as betaines, quaternary ammonium compounds etc., in the cyclodextrin composition (paragraph bridging col. 13-14) for their antimicrobial action. Patent '666 is also directed cyclodextrin containing composition for the same use i.e., capturing molecules of unwanted odor from human skin, hair or from inanimate surfaces. The '666 patent teach the specific castor oil surfactant claimed and also citric acid buffering agent. Thus, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to add antimicrobial compounds, specific surfactants, buffering agents (of '217 and '666 patents) in the composition of '695 patent with an expectation to preserve the composition from microbial growth as well as stabilize the composition. Further, optimizing the amounts of the active agents and excipients so as to achieve the optimum efficiency in capturing unwanted molecules in

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the composition of '695 would have been within the scope of a skilled artisan.

Furthermore, optimizing the amounts of the components such as cyclodextrin, surfactants, incorporation of buffering agents and antimicrobial agents.

Response to Arguments

Applicant's arguments filed 6-29-06 have been fully considered but they are not persuasive.

Applicants state that in order to expedite the prosecution, a Statement of Common Ownership in compliance with 37 CFR 1.78 (c) and 35 USC 103 (c) has been prepared and therefore the rejections under judicially created doctrine of obviousness-type double patenting as well as a rejection under 35 USC 103(a) are overcome.

In response to the common ownership statement, the rejection of claims 1-14, 16 and 18-58 as being not patentably distinct from the commonly assigned US 6,878,695, has been withdrawn.

While the common ownership statement is sufficient to overcome the rejection of instant claims under 35 USC 103(a) over US 6,878,695, the double patenting rejection of record cannot be overcome by the above statement.

35 U.S.C. 103(c) cannot be relied upon to overcome or prevent a double patenting rejection. See 37 CFR 1.78(c) and MPEP § 804. See MPEP § 706.02(I) - § 706.02(I)(3). Instead, a terminal disclaimer should be filed to overcome the instant

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rejection. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Accordingly, the double patenting rejection of record has been maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
September 13, 2006



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SUPERVISORY PATENT EXAMINER
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